

Supreme Court Holds That Time Spent in Security Screening Is Not Compensable Time

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By Michael S. Kun

In order to prevent employee theft, some employers require that their employees undergo security screenings before leaving the employers' facilities. This is particularly so with employers involved in manufacturing and retail sales, since such employers are often concerned that valuable merchandise may be removed by employees in bags, purses, or jacket pockets.

Often in the context of high-stakes class actions and collective actions, parties have litigated whether time spent undergoing a security screening must be compensated under the Fair Labor Standards Act ("FLSA"). On December 9, 2014, a unanimous U.S. Supreme Court answered that question—*no*.

The Court's decision in *Integrity Staffing Solutions v. Busk* may have a far-reaching practical and legal impact. Not only may it make more employers comfortable conducting security screenings of their employees, but it may bring an end to most class actions and collective actions filed against employers seeking compensation for employees' time spent in such screenings.

Background

The employees at issue in *Integrity Staffing* were employed to retrieve products and package them for delivery to Amazon customers. Several former employees filed a putative class action lawsuit, contending that they were entitled to be paid for the time spent undergoing security screenings before leaving the warehouse, which they estimated took 25 minutes a day.

The U.S. District Court in Nevada dismissed the lawsuit, holding that the time spent in screenings was postliminary, noncompensable time as it was not integral and indispensable to the employees' principal activities. The U.S. Court of Appeals for the Ninth Circuit reversed that decision, concluding that activities that might normally be considered postliminary and noncompensable become compensable if they are required and performed for the employer's benefit.

The Supreme Court granted certiorari. And, reversing the Ninth Circuit's opinion, it has concluded that time spent in security screenings by Integrity Staffing employees is *not* compensable under the FLSA.

The Supreme Court's Analysis

The Supreme Court's analysis in *Integrity Staffing* began where it must—with a discussion of the Portal-to-Portal Act, which exempts employers from paying employees for activities that are preliminary or postliminary to the “principal activity or activities.”

The Court explained that “principal activity or activities” include all activities that are an “integral and indispensable part of the principal activities.” In turn, the Court stated, “An activity is ... integral and indispensable to the principal activities that an employee is employed to perform if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities.”

In reaching its conclusion that security screenings are noncompensable postliminary activities, the Court first found that the screenings were not the employees' “principal activities” – Integrity Staffing had not hired them to undergo security screenings. And they also were not “integral and indispensable” to the employees' work as warehouse workers, since the employees could do their jobs—retrieving packages—without such screenings.

Where the Ninth Circuit erred, according to the Court, was in focusing on whether an employer “required” a particular activity. As the Court explained, “If the test could be satisfied merely by the fact that an employer required the activity, it would sweep into ‘principal activities’ the very activities that the Portal-to-Portal Act was designed to address.”

Not unimportantly, the Court also rejected the argument that the time spent in security screenings became compensable because Integrity Staffing could have reduced the time considerably such that it was a *de minimis* amount: “The fact that an employer could conceivably reduce the time spent by employees on any preliminary or postliminary activity does not change the nature of the activity or its relationship to the principal activities that an employee is employed to perform.”

What Employers Should Do Now

There can be no question that *Integrity Staffing* is a significant victory for employers.

While there could conceivably be individuals who are employed in positions whereby security screenings could be considered to be an “integral and indispensable” part of their jobs and therefore must be paid for them—such as the persons who actually conduct the screenings—the Supreme Court's decision should have far-ranging practical implications.

Excepting for unusual circumstances, employers that require employees to undergo security screenings can feel more comfortable than ever that such time is not compensable and that their practices are less likely to be challenged than before.

Employers that have refrained from requiring employees to undergo security screenings because of their concern that such time could be deemed compensable should feel more comfortable implementing such screenings.

But employers should nevertheless proceed with caution, particularly if their screenings result in employees waiting to be screened for significant periods of time. The Supreme Court's near-final words should not be ignored: "These arguments are properly presented to the employer at the bargaining table, not a court in an FLSA action" (citations omitted). Requiring employees to wait significant amounts of time for security screening could trigger union organizing efforts or, in unionized workforces, demands to be paid for such time.

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